AUG 13 1945
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 164 + 165

LORRAINE CASTLE APARTMENTS BUILDING CORPORATION, INC., ET AL.,

Petitioners,

vs.

JUSTIN MACKIEWICH, ET AL.,

Respondents.

ANGELO CASTELLANI, ET AL.,

Petitioners,

vs.

JAMES W. McNICHOLS, TRUSTEE, ET AL.,

Respondents.

REPLY OF WILLIAM BART, INTERVENING PETITIONER, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WILLIAM HENNING RUBIN,
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STATEMENT OF THE CASE.

The action is a Chapter 10 proceedings brought by a corporation which is the owner of an apartment building located in the City of Chicago, Illinois, at 5001 West Monroe

Street, consisting of twenty-four (24) apartments, constructed in the year 1928, and having an annual income of approximately Fourteen Thousand, Eight Hundred ($14,800.00) Dollars (Tr. 123).

The petition was filed on the 30th day of April A. D. 1942 (Tr. 2), and was approved as filed in good faith on the 5th day of May, 1942 (Tr. 11). In 1935, the debtor corporation filed a 77 B proceedings which culminated in a seven (7) year extension, thereby extending the maturity date to April 30, 1942 (Tr. 52).

The petition filed by the debtor corporation on April 30, 1942, provided among other things, that the payment of the bonds be extended for a period of five (5) years; that the debtor continue to pay interest on all outstanding bonds and continue the retirement of the bonds by purchase from time to time through the sinking fund Tr. 5).

On the 12th day of August, 1942, the debtor corporation filed a plan of reorganization which, in sum and substance, provided that the bondholders receive seventy (70%) per cent of the face value of their bonds (Tr. 23); that the debtor borrow Fifty Thousand ($50,000.00) Dollars, and use the cash on hand in the sum of Four Thousand Forty-nine and Ninety-four ($4,049.94) Cents on deposit at the First National Bank in Chicago, Illinois, towards the payment of Seventy (70¢) cents on the dollar to the bondholders plus expenses of reorganization (Tr. 22).

On October 6, 1942, Archie H. Cohen, Referee in Bankruptcy as Special Master, filed a report with the Clerk of the Court and recommended the disapproval of the debtor's plan of reorganization as being unfair and inequitable (Tr. 30). On October 22, 1942, leave was granted to the debtor by the Referee to amend the plan of reorganizaton, the amendment providing for the payment of eighty (80%) per cent of the face value of the bonds instead of seventy (70%) per cent (Tr. 33 and 34).

On January 15, 1943, the Referee in Bankruptcy as Special Master filed a supplemental report, on the amended plan and recommended that the amended plan be disapproved since the offer of eighty (80¢) cents on the dollar was not fair and reasonable (Tr. 65). On July 20, 1943, the Court having the case under advisement pursuant to Rule 7, removed the debtor corporation from possession and appointed James W. Nichols as Trustee, and directed the Trustee to prepare a plan of reorganization embracing the sale of the property if fair and feasible and directed that the same be submitted before the Special Master (Tr. 92).

On the 7th day of September, 1943, the Trustee filed a plan of reorganization which provided for the sale of the property at an upset price of Seventy-five Thousand ($75,000.00) Dollars (Tr. 126 and 123). On the 15th day of September, 1943, the debtor asked for leave to withdraw the last plan of reorganization submitted and for leave to file an amended plan of reorganization which provided that the principal stockholder contribute Ten Thousand ($10,000.00) Dollars in addition to the funds now on hand in the bank account of the Trustee in bankruptcy to pay the bondholders accrued interest to date and a cash dividend (Tr. 36). The debtor's plan further provided that the time of payment be extended for five (5) years with interest at five (5%) per cent per annum and that the claims of persons that have acquired bonds during the pendency of these proceedings, namely $52,500.00 out of the total issue of $72,500.00, be limited to the amount paid therefor.

The Referee as Special Master on October 7, 1943 filed a report upon the plan of reorganization submitted by the Trustee upon the amended plan of reorganization filed by the Debtor (Tr. 147). In his report, the Referee as Special Master recommended that the amended plan of

reorganization of the debtor be disapproved as being unfair and unfeasible (Tr. 162). The Referee as Special Master, also recommended that the Trustee's plan of reorganization to sell at an upset price of Seventy-Five Thousand ($75,000.00) Dollars be approved, as fair and feasible (Tr. 163).

The Special Master, further recommended that the claims of persons that purchased bonds during the pendency of these proceedings, be allowed on a parity with other claims, since no privity existed between the purchaser of the bonds during the pendency of the proceedings and that of the Debtor and that no fraud was committed by those who purchased bonds during the pendency of this proceedings (Tr. 161).

On November 1, 1943, the Debtor, its stockholders and a purported bondholder filed a motion requesting that the court limit the claims of persons that purchased bonds during the pendency of the proceedings. The Court took the motion under advisement and considered it along with objections filed to the plan (Tr. 405).

On February 10, 1944, the Court entered an order, granting the Debtor leave to file a petition, to limit the allowance of certain claims and denied said petition, stating that no new issues had been raised apart from the fully considered objections to the Trustees' plan (Tr. 451).

On the 21st day of February, 1944, the Court entered an order, approving the plan of reorganization of the Trustees, in accordance with the memorandum of February 10, 1944 (Tr. 457).

On the 10th day of March, 1944, the Debtor filed a notice of appeal from the order of February 10, 1944 denying Debtor's petition to limit the claims of certain bondholders (Tr. 461).

On the 20th day of March, 1944, Angelo Castellani and Margaret Castellani, the purported stockholders of the Debtor, filed a petition in the District Court to dismiss the proceedings for want of jurisdiction, since the corporation had been dissolved by a decree entered June 18, 1935, in the Superior Court of Cook County.

On the 21st day of March, 1944, Angelo Castellani and Margaret Castellani filed a notice of appeal, from the order entered on the 21st day of February, 1944, approving the report of the Special Master, filed on October 7, 1943, approving the plan of reorganization filed by the Trustee, and overruling the objections to the Report of the Special Master.

The Circuit Court of Appeals rendered a decision on the 4th day of May, 1945, (Rec. 503) affirming the decree of the District Court entered on the 10th day of February, 1944, denying debtor's petition to limit the claims of certain bondholders (Tr. 494) and affirming the plan of reorganization of the Trustees in accordance with the memorandum of the District Court on February 10, 1944 (Tr. 494).

PROPOSITIONS OF LAW RELIED ON.

I.

The Supreme Court of the United States will not attempt to analyze evidence where both the District Court and the Circuit Court of Appeals have concurred in findings of fact.

Workman v. *New York*, 179 U. S. 552.
Schwartz v. *Duss*, 187 U. S. 8.
Wilderoft, 201 U. S. 378.
Bochmer v. *Pennsylvania Railroad Co.*, 252 U. S. 496.
Page v. *Arkansas N. G. Corp.*, 286 U. S. 269.
Pick Manufacturing Co. v. *General Motors Corporation*, 299 U. S. 3.
Virginia Railroad Co. v. *System Federation #40*, 300 U. S. 515.

II.

No dispute exists between different circuits.

III.

No new question has been presented which has not been decided previously.

Country Life Apartments, Inc. v. *Buckley*, 145 Fed. (2d) 934 (C. C. A. 2nd 1944).
In re V. Loewer's Gambrinus Brewery Co., Inc., 141 Fed. 2d 747 (C. C. A. 2d, 1944).

ARGUMENT AND BRIEF.

The Supreme Court of the United States will not attempt to analyze evidence where both the District Court and the Circuit Court of Appeals have concurred in the findings of fact.

May it please the Court the Debtor corporation has attempted to invoke the jurisdiction of this court under Section 240 of the Judicial Act as amended, 28 U. S. A. 347. The debtor sets forth under the title "Questions Presented" four items as the basis for the issuance of a Writ of Certiorari which are as follows:

> "1. While the Court in a Chapter X proceeding is in the process of working out a plan agreeable to the debtor and more than two-thirds of its creditors, is interference by speculators who connive and conspire to solicit and buy up more than two-thirds of debtor's bonds while the debtor's hands are tied, with the object of preventing reorganization and forcing liquidation, a violation of Chapter X of the Bankruptcy Act.
>
> 2. Under such circumstances should the Court have summarily denied the petition to restrict claims so purchased to the amount paid for them.
>
> 3. Under such circumstances should the Court have refused to submit to the creditors the debtor's proposal to contribute additional funds, make immediate distribution of a substantial amount, pay the balance of all claims in full in five years, with interest at 5%, or if such claims were so limited, to make immediate payment of all claims in full.
>
> 4. Under such circumstances does Chapter X of the Bankruptcy Act upon a voluntary petition for reorganization, permit liquidation under the guise of reorganization, without an adjudication in ordinary bankruptcy."

The debtor then takes the above mentioned statements which it presents as questions to be decided by this court as a basis or reason for the allowance of the Writ of Certiorari. The debtor says that the following questions should be settled by this Court:

1. "Is the solicitation by speculators of a debtor's bonds during the pendency of a reorganization proceeding under Chapter X of the Bankruptcy Act *for the purpose of preventing a reorganization* prohibited by the Act of general equitable principles, or is it to be sanctioned in order not to 'destroy or impair the sales value of securities by abolishing the profit motive which inspires purchasers' ".

2. "The Statute does not contemplate a liquidation in a Chapter X proceeding, but a liquidation in ordinary bankruptcy, or a dismissal outright."

The debtor, under the heading "Errors relied upon", once again rewords and rehashes the items stated under the headings "Questions Presented" and "Reasons Relied Upon for the Writ of Certiorari", and, in substance says that the Court erred in refusing to limit the participation of those who purchased their bonds during the pendency of the proceedings; that the District Court should have permitted a full hearing on the petition to limit the participation of certain bondholders; that the Court should have approved an extension for five (5) years as requested by the debtor; and that the Court should not permit "liquidation under the guise of reorganization".

The debtor under the guise of having this Court determine whether speculation in bonds bought and sold during the pendency of the proceedings should be permitted, attempts to have this Court consider the merits of the debtor's plan of reorganization and its plea to limit

the participation of those who purchased their bonds during the pendency of the proceedings.

Regardless of whether or not this Court feels speculation in bonds after a petition is filed under Chapter X should or should not be permitted, is of no consequence in this case. Assuming merely *arguendo* that under certain circumstances a limitation should appropriately apply as in a case where fraud was committed or the parties acted in a fiduciary capacity, those circumstances do not exist here. The debtor failed to prove that there was any fraud in the purchase of bonds made by purchasers during the pendency of the proceedings; that there was any fiduciary relationship between the purchasers of the bonds and other members of the corporation or the other bondholders; or, that the bonds were purchased for the purpose of preventing a reorganization. The Master found that no fraud was committed in the purchase of the bonds and both the District Court and the Circuit Court of Appeals concurred in these findings.

It has become a universal rule that Courts will not interfere and limit the holders of securities purchased during the pendency of reorganization proceedings to the amount paid therefor unless fraud was created or if the purchasers of the bonds acted in a fiduciary capacity.

Mokova Corporation v. *Dolan*, 147 F. 2d 340. The theory of the Courts in refusing to limit participation of claimants to the amount paid therefor, except in unusual circumstances, is that the value of any claim would be zero if the purchaser could receive no more than he paid therefor.

A debtor corporation by following the tactics and procrastinations of the debtor corporation in the case at bar could virtually compel the holders of claims to accept any form of plan of reorganization, since they could not sell

their claims during the pendency of the proceedings and by procrastination could continue the litigation indefinitely. In fact, such a ruling would tend to affect the marketability of securities of this corporation that are even in good standing, since the filing of a Chapter X proceeding by any corporation, would cause the value of its securities that it issued to become frozen in the hands of the general public. Many investors would be very reluctant to loan money on this basis.

This Court has held in a number of cases, *Workman* v. *New York*, 179 U. S. 552; *Schwartz* v. *Duss*, 187 U. S. 8 and *Wildcroft*, 201 U. S. 378 that where both courts below have concurred in a finding of fact, it will be accepted as conclusive unless it affirmatively appears that the lower courts obviously have erred. In *Boehmer* v. *Pennsylvania Railroad Co.*, 252 U. S. 496, the Court said where two courts have agreed as to construction to be placed upon certain facts, the Supreme Court will not enter into a minute analysis of the evidence. *Page* v. *Arkansas N. G. Corp.*, 286 U. S. 269, *Pick Mfg. Co.* v. *General Motors Corporation*, 299 U. S. 3, *Virginia Railroad Co.* v. *System Federation # 40*, 300 U. S. 515.

The debtor contends that the District Court erred in denying its petition for a limitation of the claims purchased during the pendency of the proceedings. The debtor assumes in its argument that it is an established fact that the claim holders (bondholders) purchased the claims for the purpose of preventing the approval of the plan of reorganization. The debtor has made allegations and conclusions of fraud, but has never been able to introduce any proof to support them. The petition to which the debtor has reference was filed on November 1, 1943, approximately over a year after a hearing was held on the identical question of the limitation of the claims of bondholders who purchased their bonds during the pendency

of the proceedings (Rec. 169). If the Court would permit the continual filing of petitions for the adjudication of questions which have been once adjudicated, proceedings such as these could never be culminated. The result being, as previously stated, that bondholders would be forced to accept any plan offered by the debtor regardless of whether it was fair and equitable to all claimants.

The debtor claims error was committed by the District Court in its failure to decide that an extension for five (5) years was fair and feasible. Whether such a plan was fair and feasible is a question of fact. The Master found that an extension was not fair and feasible, the District Court and the Circuit Court of Appeals have concurred. As previously stated, this Court has always taken the position that it will not review questions of fact.

No dispute exists between different circuits.

No new question has been presented which has not been decided previously. The debtor further contends that error was committed by the District Court and the Circuit Court of Appeals in approving a plan of reorganization which embodied a liquidation of the assets of the corporation. The debtor has set this item up as question number 4 to be decided by this Court.

This Court, in the decisions rendered over a period of years, has set a basis upon which it will assume jurisdiction: (1) that a dispute exists between different circuits; (2) that a new and novel question has been presented and the Circuit Court of Appeals has no guiding post.

This case involves neither of the two points which should act as a basis for this court in assuming jurisdiction.

The Circuit Court of Appeals, Second Circuit, in the case of *Country Life Apartments* v. *Buckley*, 145 Fed. (2nd) 934, has concurred in the decision of the Lorraine

Castle Apartments Building Corporation, citing the case expressly in its opinion on Page 938:

> "Here when the petition was filed it did not appear that the debtor had no chance for reorganization or that reorganization would not be a reasonable method of serving the best interests of creditors and stockholders. The District Court found that the petition was filed in good faith, and that order was never appealed from. It cannot now be attacked for lack of jurisdiction. Bankruptcy Act, § 149. The course of proceedings indicates also the good faith of the attempts to reorganize. * * *
>
> "Under these circumstances *Fidelity Assurance Ass'n* v. *Sims, supra,* does not apply, and the trustee's plan was properly approved and confirmed by the District Court as being within the language of Bankruptcy Act, § 216(10), which provides that a plan of reorganization may include the sale of all or any part of the debtor's property at a fair upset price and the distribution of all or any assets among those having an interest therein. This conclusion is amply supported by our own decisions and those of other courts. *In re V. Loewer's Gambrinus Brewery Co.*, 2 Cir., 141 F. (2nd) 747; *In re Lorraine Castle Apartments Bldg. Corp.*, D. C. N. D. Ill., 53 F. Supp. 994. See also *In re Central Funding Corp.*, 2 Cir., 75 F. 2nd 256, and *In re Porto Rican American Tobacco Co.*, 2 Cir., 112 F. 2nd, 655, both of which were distinguished and not disapproved in *Fidelity Assurance Ass'n* v. *Sims, supra.*"

The debtor has drawn a conclusion that the intervening petitioner, Bart, who purchased the $52,000.00 bonds, conspired to prevent a reorganization and thereby force liquidation. Whereas, the facts show that the intervening petitioner did not conspire with any one and did not attempt to prevent a reorganization. The attorney for the debtor appeared before the District Court judge in October of 1942, at the time the Master recommended that

the debtor pay 85¢ on the dollar for the outstanding bonds, and represented to the court that bondholders were selling their bonds at 70¢ on the dollar and up (Rec. 218). The debtor's attorney then requested "that your Honor also direct the Referee and Special Master to make such investigation as may seem advisable with respect to what is going on in the purchase of these bonds as I have indicated" (Rec. 218).

That hearing took place on October 15, 1942 and as a result thereof an order of reference for the purpose of investigating the purchase of the bonds was made. (Rec. 32).

The Special Master after conducting lengthy hearings from October 15, 1942 until January of 1943 filed a Supplemental Report (Rec. 64) in which he said that there was no attempt to perpetrate a fraud upon the court by the purchaser of the bonds.

The District Court in its opinion, 42 Fed. Supp. 973 (Rec. 449) said:

> "With reference to the acquisition of $52,000 of bonds by 'speculators' during the pendency of the proceedings, the Special Master has found that there was no fraud involved in the purchase of these bonds and that the purchasers are not and never were in a fiduciary relationship with the bondholders, the debtor, or stockholders of the debtor. The evidence in this case does not warrant disturbing the findings of the Special Master on these two points, and, as there is no proof that the bonds in question have been acquired by their present owners for the purpose of accepting or rejecting a plan other than in good faith, this Court is not disposed to disqualify these bonds from voting upon the plan of reorganization approved herein."

The debtor by mere allegation has attempted to convince the District Court, the Circuit Court of Appeal and

this court that the purchaser of $52,000 in bonds created a fraud on the other bondholders, whereas the Master, the District Court Judge and the Circuit Court of Appeals found that no fraud was committed, and that there was no basis to limit the participation of the intervening petitioner, Bart.

The Circuit Court of Appeals in its decision (Rec. 498) says:

> "Under the order of reference, the special master had jurisdiction of the parties and of the subject matter and heard fully all the evidence relating to alleged fraud upon the part of the so-called speculators. He saw the witnesses, observed them upon the witness stand and made his findings and these the court approved. Indeed the evidence offered by the debtor and its stockholders failed utterly to establish any possible fraud upon the corporation or any of the beneficiaries of the estate.
>
> "The debtor's obligation is to pay his debts. The property right of a bondholder is the right to receive from the debtor the entire amount the latter has promised to pay. In the absence of some equitable reason, taking the case out of the ordinary rule, the prices which security holders pay for their securities in no wise affects the measure of their participation in reorganization or their voting power. *Security-First Natl. Bank* v. *Rindge Land & Navigation Co.*, 85 F. 2nd, 557, 561 (CCA9): *In re Utilities Light & Power Corp.*, 29 F. Supp. 763, 770; *Standard Gas & Electric Co.* v. *Deep Rock Oil Corp.*, 117 F. 2d, 615, 619 (CCA10) cert. den. 313 U. S. 564; *Mokava Corporation* v. *Dolan*, ... F. 2d ..... (CCA2), January 2, 1945. To reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit mo-

tive, which inspires purchasers. This is even more evident when the purchaser acquires a lawsuit when he buys a debt. He hopes to realize more than he pays and at the same time runs the risk of recovering less. If the claimants are limited to the amounts paid, the debtor will never offer to bondholders anything above the current price for the bonds. This would encourage the debtor to delay the plan for rehabilitation in the hope that he will be able to settle the claims against him at less than a fair amount. Such results are not in accord with the purposes of the legislation. *Security-First Natl. Bank* v. *Rindge Land & Navigation Co.*, 85 F. 2d. 557, 563 (CCA9); *Mokava Corporation* v. *Dolan*, ... F. 2d ..... (CCA2), January 2, 1945. We conclude that there is no basis upon which we could sustain any objection to the finding of fact that the claims of bondholders are without fraud. Accordingly, the order entered was entirely proper.

"But appellants argue that they have not had their day in court; that they filed a petition which the court dismissed without hearing. If this were a fact, of course, their complaint would be well founded. But the record discloses that the court had already made an adjudication of the issues involved before this petition was filed. That petition presented no question which had not previously been fully considered by the master at the hearing on the trustee's plan and objections thereto. Thus the trustee's plan provided for no limitation upon the claims for any bondholder. Among the objections interposed by appellants was one that the claims were fraudulent and should be limited to the amounts paid and that they be specifically held not entitled to vote on any plan. The issue was drawn, evidence presented, and a decision made. When the court approved the master's report in this respect, he completely adjudicated all the issues raised and presented by the petition. Therefore, it was properly denied.

"Appellant insists that a plan of reorganization may not properly contemplate a sale of the debtor's property. Section 216 (10) of the Bankruptcy Act, (11

> U. S. C. A., Sec. 616 (10)), provides that a plan of reorganization 'shall provide adequate means for the execution of the plan,' which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein."

The Debtor has attempted by insinuation and implication to convince this court of a direct falsehood that the owner and holder of $52,000 in bonds was committing a fraud upon this court. The entire proceedings and the request for this court to take jurisdiction resolves itself into the definite conclusion that the instant case is one where a disgruntled debtor is attempting to use his right of appeal merely for the purpose of delay and of causing untold expense to the bankrupt estate.

The Debtor has attempted to use the decisions of *American Insurance Co.* v. *Avon Park*, 311 U. S. 138 as a basis for limiting the claims of purchasers of bonds during the pendency of the proceedings. In the *Avon Park* case, the parties were in a fiduciary capacity which situation did not prevail in the instant case, and therefore that decision does not apply.

In the case of *Equitable Reserve Assn.* v. *Dardanelle Special School District*, 138 Fed. (2nd) 236 in which case the appellants complained that the plan was inequitable and discriminatory against Rainey & Sons who had paid $61,908 for a $121,000 claim and would receive a larger percentage of the cost than would the appellants who were original bondholders, the Court pointed out expressly that

the City of Avon Park, *supra* does not support the contention for the limitation of bondholders who purchase their bonds during the pendency of the proceedings.

The debtor also cities *Case* v. *Los Angeles Lbr. Co.*, 60 Supreme Court, 1, that the purpose of Sec. 77-B is to avoid liquidations and force sales with drastic deflationary effects.

We are now operating under Chapter X proceedings and the *Country Life* case *supra* is further basis for the approval of the Circuit Court of Appeals' decision in the case at bar.

The only basis which the debtor can find to support its contention that a liquidation should not be permitted under a Chapter X proceedings is the case of *Fidelity Assurance Association* v. *Sims*, 318 U. S. 608 (1943). That case has been distinguished from the case at bar and that of the *Country Life Apartments, Inc.* v. *Buckley*, 145 F. 2d 935 (C. C. A. 1944). The Sims case stands for the proposition that a Chapter X proceedings should be dismissed if it cannot meet the statutory requirements of having been filed in good faith and where at the outset the only solution would be a liquidation similar to a regular bankruptcy liquidation. In the case at bar, the petition was approved as having been filed in good faith in May of 1942, said order was never contested or appealed from by the debtor and that order must stand.

It cannot be said that a sale was contemplated in the first instance in the case at bar when the Chapter X proceedings was filed. It was only after the continued delay and procrastination of the debtor, and the recent real estate market which convinced all those concerned that if the property was sold today, all claimants could be paid one hundred cents on the dollar plus accrued interest to date at the rate of seven (7%) per cent, and at the same time leave a substantial sum for the debtor.

One cannot help but remember that the debtor after filing his petition and having it approved as being filed in good faith, offered to pay but seventy cents on the dollar using the funds on hand to make such payment and now feels dissatisfied and disgruntled because all of the creditors will receive one hundred cents on the dollar, plus interest, and the debtor will receive a substantial sum for his equity, whereas if the original plan proposed by the debtor had been successful, the debtor would have made additional profit.

The debtor has attempted to put a new color on his petition for limitation of purchasers of bonds during the pendency of the proceedings by having a bondholder join in the petition. The bondholder under the Trustee's plan receives one hundred cents on the dollar, plus seven (7%) per cent interest, in accordance with the terms of the Trust Deed, and, therefore, does not have an appealable interest. Counsel for the intervening petitioner stated that fact to be before the Circuit Court of Appeals in his brief, but the Circuit Court of Appeals found it unnecessary to consider the point inasmuch as the point approved the Trustee's plan of reorganization.

Conclusion.

The reasons that impelled the District Court to approve the Trustee's plan of reorganization and to deny the debtor's petition to limit the claims of those who purchased bonds during the pendency of the proceedings and that of the Circuit Court of Appeals in affirming the orders of the District Court have now become obvious from the facts as shown in our brief.

1. The Supreme Court of the United States will not attempt to analyze evidence where both the District Court and the Circuit Court of Appeals have concurred in findings of fact.

2. No dispute exists between different circuits.

3. No new question has been presented which has not been decided previously.

We respectfully submit that these reasons amply justify this Court in affirming the decisions of the District Court and the Circuit Court of Appeals.

Respectfully submitted,

WILLIAM HENNING RUBIN,
Attorney for Intervening Petitioner William Bart.